IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17406 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURENDRANAGAR DISTRICT PANCHAYAT - Petitioner(s)

Versus

PAMBA RATNSEN CHAUHAN & 3 - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2, 4,
MR MUKESH PATEL Ld. AGP for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 09/01/2006

ORAL JUDGMENT

1. Heard the learned Advocate, Mr.Munshaw, on behalf of the petitioner. Though notice of rule has been served to the respondent No.1, no appearance is filed by any

Advocate on her behalf and respondent No.1 is not remained personally present. Therefore, the matter of 2003 has been taken up for final hearing in absence of respondent No.1. Learned AGP, Mr.Mukesh Patel, appearing on behalf of respondent No.2.

2. This Court has issued rule on 12th December,2003 and meanwhile, ad-interim relief in terms of Paragraph No.10(D) was granted. Thereafter, on 16th June,2004, the learned Advocate, Mr.Munshaw, had made a statement before this Court that amount of the gratuity, which was ordered by Controlling Authority, has been disbursed in favour of respondent No.1 and, therefore, petition may be heard on priority basis. The Controlling Authority has passed order in favour of respondent No.1 granting amount of gratuity of Rs.27,479.10 paise with 10% simple interest with effect from 1st March,1999 by order dated 22nd June,2000. This order was challenged in appeal by petitioner and Appellate Authority has confirmed the order passed by Controlling Authority by order dated 19th June,2002. Then, petitioner has challenged these both orders before this Court in Special Civil Application No.7387 of 2002. This Court has passed an order (coram : Ravi R. Tripathi,J.) dated 28th October,2002. Before this

Court in earlier petition, the contention was raised by learned Advocate, Mr.Munshaw, that both the Authorities have not considered the Government Resolution dated 19th July,1976 and, therefore, Court has set aside the order and remanded back matter to the Controlling Authority to pass fresh order after taking into consideration the contention of District Panchayat. Thereafter, Controlling Authority again considered the case and contention raised by petitioner, and passed an order on 28th February,2003 confirming the earlier order granting the amount of gratuity for a period of 11 years from 1966 to 1976 of Rs.27,479/- with 10% simple interest with effect from 1st March,1999. Thereafter, again, an appeal was preferred by petitioner and Appellate Authority has also confirmed the order of Controlling Authority by an order dated 23rd July,2003. The petitioner has produced Government Resolution dated 19th July,1976. Learned Advocate, Mr.Munshaw, has raised certain legal contentions before this Court and also submitted that after 1976 to 1999, when respondent No.1 retired, all the retired benefits have been paid to respondent No.1. She is also receiving pension as a Government employee. However, he submitted that because of policy matter, part time employee is not entitled for amount of gratuity as per the Government

Resolution dated 19th July,1976, the present petition is filed.

3. I have considered the submissions made by learned Advocate, Mr.Munshaw. Simultaneously, I am considering the fact that respondent No.1 retired from service in 1999. It is not in dispute that she has worked as a part time employee from 1966 to 1976. She was regularized in service with effect from 1st November,1976. The petitioner has considered her service for 1st November,1976 to the date of retirement upto 1999 but, earlier service was not taken into account by petitioner and, therefore, application was filed by respondent No.1 before Controlling Authority for receiving benefits of part time service. Looking to fact that amount of Rs.27,479/- is already paid to the respondent No.1 by petitioner and an age of respondent No.1 is probably more than 67 years, therefore, considering fact that payment is already made and mere legal contention has been raised which was examined by both the Authorities in detail and passed orders, therefore, according to my opinion, the conclusion of both the authorities on basis of Government Resolution dated 19th July,1976 and considering the fact that there was no break in service between part time and

full time and pension was not available to the respondent No.1 for the service which was rendered as part time employee. Therefore, according to my opinion, in such facts of meagre amount which was already received by respondent No.1, a lady Class-IV employee, who retired from service in 1999, now it is not proper to disturb the orders while exercising extra ordinary jurisdiction under Articles 226 /227 for considering the legal contention which was not necessary to be dealt with, as apparently there is no error committed by the authority while passing such orders and looking to meagre amount involved, according to my opinion, no interference is necessary in view of special facts and circumstances of case. Therefore, there is no substance in the present petition. [see : Mangatram Vs. Hariyana Vidyut Prasaran Nigam Ltd., Panchkulla and others reported in 2005 (107) FLR 1203, Punjab & Hariyana High Court (D.B.)] Present petition is dismissed. Rule discharged. Interim relief granted earlier stands vacated. It is clarified that present order may not be treated as precedent.

(H.K.RATHOD,J.)

(vipul)